

## **EXHIBIT I**

**FILED**

FEB - 6 2004

UNITED STATES BANKRUPTCY COURT  
SAN FRANCISCO, CA

1 JAMES L. LOPES (No. 63678)  
2 JANET A. NEXON (No. 104747)  
3 GARY M. KAPLAN (No. 155530)  
4 HOWARD, RICE, NEMEROVSKI, CANADY,  
5 FALK & RABKIN  
6 A Professional Corporation  
7 Three Embarcadero Center, 7th Floor  
8 San Francisco, California 94111-4024  
9 Telephone: 415/434-1600  
10 Facsimile: 415/217-5910

11 Attorneys for Debtor and Debtor in Possession  
12 PACIFIC GAS AND ELECTRIC COMPANY

13 UNITED STATES BANKRUPTCY COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16 In re

Case No. 01-30923 DM

17 PACIFIC GAS AND ELECTRIC  
18 COMPANY, a California corporation,

Chapter 11 Case

19 Debtor.

Date: March 5, 2004

Time: 1:30 p.m.

Place: 235 Pine Street, 22nd Floor  
San Francisco, California

Judge: Hon. Dennis Montali

20 Federal I.D. No. 94-0742640

21 NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO OBJECT TO  
22 CERTAIN PROOFS OF CLAIM AND FOR RELATED RELIEF;  
23 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF  
24 [SUPPORTING DECLARATION OF KERMIT KUBITZ FILED SEPARATELY]  
25  
26  
27  
28

MOTION FOR EXTENSION OF TIME TO OBJECT TO CERTAIN PROOFS OF CLAIM AND RELATED RELIEF

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

14581

## TABLE OF CONTENTS

		Page
1		
2		
3	NOTICE OF MOTION AND MOTION	1
4	MEMORANDUM OF POINTS AND AUTHORITIES	2
5	I.    INTRODUCTION	2
6	II.   FACTUAL BACKGROUND AND DISCUSSION	3
7	A.   General Factual Background	3
8	B.   The FERC Refund Proceedings And Other FERC	
9	Proceedings.	6
10	1.   The FERC Refund Proceedings	6
11	2.   The Scheduling Coordinator Services Tariff Proceeding	8
12	3.   The California-Oregon Transmission Project Proceeding	9
13	4.   The PX Chargeback Proceeding	10
14	C.   Claims Affected By Resolution Of The FERC Refund	
15	Proceedings.	11
16	1.   RMR Claims	11
17	2.   Claims For Imbalance Energy And Emergency Services	12
18	3.   QF Claims	13
19	D.   Extension Applicable To Other Portions Of Claims With ISO,	
20	PX And Generator Claims Component	15
21	E.   Extension Of The Time To Object To Claims Subject To	
22	Pending Objections And Other Disputed Claims	15
23	F.   The Claims Subject To The Requested Extensions Should Be	
24	Deemed Disputed Claims Until The Applicable Objection	
25	Deadline Elapses	16
26	III.  CONCLUSION	17
27		
28		

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

**NOTICE OF MOTION AND MOTION**

**PLEASE TAKE NOTICE** that on March 5, 2004 at 1:30 p.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Dennis Montali, located at 235 Pine Street, 22nd Floor, San Francisco, California, Pacific Gas and Electric Company, the debtor and debtor in possession in the above-captioned Chapter 11 case ("PG&E" or the "Debtor"), will and hereby does move (the "Motion") the Court for entry of an order (1) extending the time for the Debtor to object to certain proofs of claim filed herein, whose allowance is dependent, in whole or in part, on certain proceedings pending before the Federal Energy Regulatory Commission, until after resolution of such proceedings, (2) extending the time for the Debtor to object to claims which are subject to pending objections or otherwise constitute "Disputed Claims" under the Debtor's confirmed Chapter 11 plan as of the time such plan becomes effective, until 30 days after the objections to such claims are resolved or such claims no longer constitute Disputed Claims, and (3) providing certain related relief.

The Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Kermit Kubitz ("Kubitz Declaration") filed concurrently herewith, the record of this case and any evidence or argument presented at or prior to the hearing on this Motion.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Rule 9014-1(c)(1) of the Bankruptcy Local Rules of the United States District Court for the Northern District of California, any written opposition to the Motion and the relief requested herein must be filed with the Bankruptcy Court and served upon appropriate parties (including counsel for PG&E, the Office of the United States Trustee and the Official Committee of Unsecured Creditors) at least 14 days prior to the scheduled hearing date. If there is no timely opposition to the requested relief, the Court may enter an order granting such relief by default and without further hearing.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

On December 22, 2003, this Court entered its order confirming the Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company Dated July 31, 2003, As Modified by Modifications Dated November 6, 2003 and December 19, 2003 (the "Plan")<sup>1</sup>. The Effective Date of the Plan has not yet occurred, although Section 8.2 of the Plan reflects that the Effective Date is anticipated to occur by March 31, 2004.

Pursuant to the Plan, unless otherwise ordered by the Bankruptcy Court, the deadline for filing objections to Claims (other than Administrative Expense Claims) is the Effective Date of the Plan. As recognized by the Plan, all ISO, PX and Generator Claims, which are classified in Class 6 under the Plan, constitute Disputed Claims, whose resolution is subject to the FERC Refund Proceedings. The Plan provides that such Claims will become Allowed Claims following resolution of the FERC Refund Proceedings. The Plan further provides that the Debtor will not attempt to obtain a determination by this Court of the matters at issue in the FERC Refund Proceedings, although the Debtor retains the right to bring objections to ISO, PX and Generator Claims before this Court on other grounds. As discussed below, the FERC Refund Proceedings remain pending, and are not expected to be resolved prior to the anticipated Effective Date of the PG&E Plan. Accordingly, presuming that the Plan becomes effective, PG&E seeks an extension of time to object to ISO, PX and Generator Claims (listed on Exhibit 1 attached hereto) until the date that such Claims become Allowed Claims under the Plan.

The Debtor requests a similar extension with respect to numerous other Claims filed against the Debtor (listed on Exhibits 2 and 4 attached hereto) that are expected to be

---

<sup>1</sup> Capitalized terms used herein without definition have the meanings ascribed to them in the Plan.

1 affected by the resolution of the FERC Refund Proceedings, and/or are subject to other  
2 FERC proceedings, which remain unresolved, as discussed below.

3 In addition, the Debtor requests that the extension apply to the other components  
4 of Claims containing ISO, PX and Generator Claims (listed on Exhibit 3 attached hereto),  
5 even if those components are not directly affected by the resolution of the FERC Refund  
6 Proceedings.<sup>2</sup> In seeking such relief, the Debtor submits that the avoidance of piecemeal  
7 litigation is in the best interests of all concerned parties, as well as the Court.

8 The Debtor further seeks an extension of the time for it to object to claims which  
9 are subject to pending objections or otherwise constitute Disputed Claims as of the Effective  
10 Date, until 30 days after the objections or disputes with respect to such Claims are resolved.  
11 This will conserve estate resources by preventing the Debtor from being forced to make  
12 potentially unnecessary objections which might otherwise be required if such objections or  
13 disputes were not resolved prior to the Effective Date, which is the current deadline for  
14 objecting to Claims.

15 Finally, the Debtor requests that the Claims that are subject to the extensions  
16 sought herein be deemed Disputed Claims under the Plan until expiration of the period for  
17 objecting to such Claims to avoid potentially paying claims that are later disallowed.

## 18 II.

### 19 FACTUAL BACKGROUND AND DISCUSSION<sup>3</sup>

#### 20 A. General Factual Background

21 PG&E filed a voluntary petition for relief under Chapter 11 of the Bankruptcy  
22 Code on April 6, 2001. A trustee has not been appointed, and PG&E continues to function  
23 as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

24  
25 <sup>2</sup> For the Court's convenience, Exhibit 5 attached hereto contains a summary of all of  
26 the Claims listed on Exhibits 1 through 4, including the total claim amount, reductions to  
27 such claim amount, the dollar amount of the claim attributable to the FERC proceedings, and  
28 the dollar amount of the claim that is not affected by the FERC proceedings.

<sup>3</sup> The evidentiary basis and support for the facts set forth in this Section are contained  
in the Kubitz Declaration filed concurrently herewith.



PG&E's Plan was confirmed on December 22, 2003. The Effective Date of the Plan has not yet occurred, although Section 8.2 of the Plan reflects that the Effective Date is anticipated to occur by March 31, 2004.

Pursuant to Section 5.5 of the Plan, unless otherwise ordered by the Bankruptcy Court, the deadline for filing objections to claims (other than Administrative Expense Claims) is the Effective Date of the Plan.<sup>4</sup>

Under Section 4.15(c) of the Plan, all ISO, PX and Generator (Class 6) Claims<sup>5</sup> constitute Disputed Claims, whose resolution is subject to the FERC Refund Proceedings. (The current status of the FERC Refund Proceedings is discussed below in Section II.B.) The Plan provides that the Debtor will not attempt to obtain a determination by this Court of the matters at issue in the FERC Refund Proceedings, although the Debtor retains the right to bring objections to ISO, PX and Generator Claims before this Court on other grounds.<sup>6</sup>

Section 5.4(g)(i) of the Plan further provides that ISO, PX and Generator Claims will become Allowed Claims on the date designated by FERC when payments are to be made on account of ISO, PX and Generator Claims pursuant to an unstayed order in the FERC Refund Proceedings, or if no date is designated in such order, 45 days after the issuance of

<sup>4</sup> Specifically, Section 5.5 of the Plan provides, in relevant part: "[u]nless otherwise ordered by the Bankruptcy Court, (a) all objections to Claims (except for Administrative Expense Claims) shall be filed and served upon the holder of the Claim as to which the objection is made (and, as applicable, upon the Debtor and the Committee) as soon as is practicable, but in no event later than the Effective Date . . . ."

<sup>5</sup> The Plan defines ISO, PX and Generator Claims as "all Claims against the Debtor arising from amounts due to the ISO, PX and various power generators based on purchases of electricity or ancillary services by the Debtor in markets operated by the PX and the ISO."

<sup>6</sup> In particular, Section 4.15(c) of the Plan provides, in relevant part:

"As of the date hereof, all ISO, PX and Generator Claims are Disputed. The Debtor agrees that for purposes of determining the amount of Allowed ISO, PX and Generator Claims that are not resolved consensually by settlement, the Debtor will prosecute the FERC Refund Proceedings only before the FERC or any Court to which an appeal from the FERC order may be taken, and will not attempt to obtain a determination of such matters before the Bankruptcy Court, except . . . to the extent the Debtor has an objection based on a matter that is not the subject matter of the FERC Refund Proceedings. Nothing herein precludes the Debtor from asserting in the Bankruptcy Court or in any other forum any other defense or objection to any ISO, PX and Generator Claims."

1 such order, provided such order has not been stayed.<sup>7</sup>

2 Generally speaking, the Plan provides for payment of Allowed Claims on the  
3 later of the Effective Date and the date the Claim becomes an Allowed Claim.<sup>8</sup> Allowed  
4 Claims are defined in the Plan to include claims that are not Disputed Claims.<sup>9</sup> Disputed  
5 Claims under the Plan include Claims or portions thereof that are subject to unresolved  
6 objections.<sup>10</sup> Section 5.4(g)(i) of the Plan provides for the establishment of one or more  
7 escrows for certain Disputed Claims for the purpose of setting aside funds to make  
8 distributions on such Claims, pending their final resolution. Section 5.4(g)(i) provides for  
9 the accrual of interest on the funds in the Disputed Claim escrow(s) and the payment of  
10 interest with respect to Disputed Claims.<sup>11</sup>

11 <sup>7</sup> In particular, Section 5.4(g)(i) of the Plan provides, in relevant part:

12 “A Disputed ISO, PX and Generator Claim shall become an Allowed Claim on  
13 the date designated by FERC when payments are to be made on account of ISO,  
14 PX and Generator Claims, pursuant to an unstayed order in the FERC Refund  
15 Proceedings; provided, however, that if no date is designated in such order, a  
Disputed ISO, PX and Generator Claim shall automatically become an Allowed  
Claim forty-five (45) days after the issuance of such order, provided such order  
has not been stayed.”

16 <sup>8</sup> Section 4.2(d) of the Plan provides, in relevant part:

17 “[E]ach of the distributions specified in this Article IV with respect to each  
18 Allowed Claim or Equity Interest shall (i) occur on the later of the Effective Date  
19 and the date such Allowed Claim or Equity Interest becomes an Allowed Claim  
or Equity Interest, or as soon as practicable thereafter . . . .”

20 <sup>9</sup> Section 1.1 of the Plan provides, in relevant part:

21 “Allowed means, with reference to any Claim against or Equity Interest in the  
22 Debtor . . . any Claim or Equity Interest which is not Disputed . . . .”

23 <sup>10</sup> Section 1.1. of the Plan provides, in relevant part:

24 “Disputed means (a) with reference to any Claim against the Debtor . . . as to  
25 which the Debtor has interposed a timely objection and/or request for estimation  
26 in accordance with section 502(c) of the Bankruptcy Code and/or Bankruptcy  
27 Rule 3018, which objection and/or request for estimation has not been withdrawn  
28 or determined by a Final Order . . . . A Claim that is Disputed by the Debtor as to  
its amount only shall be deemed Allowed in the amount the Debtor admits owing,  
if any, and Disputed as to the excess.”

<sup>11</sup> In particular, Section 5.4(g)(i) of the Plan provides, in relevant part:

“From and after the Effective Date, the Cash reserved for such Disputed Claim  
will earn interest at the same rate as if such Cash had been invested in either  
(i) money market funds consisting primarily of short-term U.S. Treasury  
securities or (ii) obligations of or guaranteed by the United States of America or

(continued . . . )



1        **B. The FERC Refund Proceedings And Other FERC Proceedings.**

2        **1. The FERC Refund Proceedings**

3        In response to the unprecedented increase in wholesale electricity prices during  
4        2000 and 2001, FERC held, on November 1, 2000, that prices in the California electric  
5        power markets were not just and reasonable. *San Diego Gas & Elec. Co. v. Sellers of*  
6        *Energy*, 93 F.E.R.C. (CCH) ¶61,121 at 61,349-61,350 (Nov. 1, 2000). In addition, on  
7        July 25, 2001, FERC held that buyers would be entitled to refunds for power purchased in  
8        such markets from October 2, 2000 through June 20, 2001. *San Diego Gas & Elec. Co. v.*  
9        *Sellers of Energy*, 96 F.E.R.C. (CCH) ¶61,120 at 61,513-61,514 (July 25, 2001). The  
10       amount of refunds was left to be determined in subsequent FERC proceedings. On  
11       December 12, 2002, a FERC administrative law judge ("ALJ") issued an initial decision (the  
12       "December 12 Order") finding that energy sellers had overcharged the utilities, the State of  
13       California and other buyers from October 2, 2000 through June 20, 2001 by approximately  
14       \$1.8 billion. *San Diego Gas & Elec. Co. v. Sellers of Energy*, 101 F.E.R.C. ¶63,026  
15       (December 12, 2002).

16       On March 26, 2003, FERC confirmed most of the ALJ's findings in the  
17       December 12 Order, but modified the refund methodology in part. *San Diego Gas &*  
18       *Electric Company et al.*, 102 F.E.R.C. ¶61,317 (2003) (the "March 26 Order"). On  
19       October 16, 2003, FERC issued an order affirming, in most respects, the March 26 Order.  
20       *San Diego Gas & Electric Company et al.*, 105 F.E.R.C. ¶61,066 (2003) (the "October 16  
21       Order"). The exact calculation of the refunds to be paid by the power sellers will not be  
22       determined until the ISO and the PX complete compliance filings to implement the changes  
23       required pursuant to the December 12 Order, the March 26 Order and the October 16 Order.  
24       Pursuant to the October 16 Order, the ISO and the PX were given a period of five months

25       ( . . . continued)

26       any agency thereof, at the option of the Debtor, until the Disputed Claim becomes  
27       an Allowed Claim . . . To the extent a Disputed Claim becomes an Allowed  
28       Claim, such Allowed Claim will be satisfied in the manner as all other Allowed  
     Claims of the same Class. In addition, the holder of such a Disputed Claim will  
     earn Post-Petition Interest."

(i.e., until approximately March 16, 2004) to complete such compliance filings. Such compliance filings by the ISO and the PX are expected to be subject to a number of challenges by interested parties. FERC is then expected to make determinations regarding the amounts owed to and owing by relevant parties, resulting in ascertainment of the Allowed amounts of ISO, PX and Generator Claims. That process is not expected to be completed until at least the latter part of 2004, as discussed below.

As a preliminary step to complete its compliance filings, the ISO must process certain preliminary reruns of the relevant data. In a request for rehearing that the ISO filed on December 15, 2003 in the preliminary rerun proceeding, the ISO advised FERC that neither the preliminary rerun nor the refund rerun deadlines established by FERC are likely to be met. In its request for rehearing, the ISO stated that its anticipated suspension of rerun activity would further prolong the ISO's schedule for completing preliminary reruns. ISO Request for Rehearing in Docket No. ER03-746-003, at p. 8. The ISO also noted in its December 15, 2003 request for rehearing that it had previously advised the FERC that it would not be able to meet the FERC's five-month deadline for completing the refund proceeding rerun. *Id.* (citing ISO Request for Rehearing in Docket No. EL00-95, *et al.*, filed November 17, 2003, at pp. 18-19).

On February 3, 2004, FERC issued an order on clarification and rehearing on preliminary rerun issues in Docket No. ER03-746-003. *California Independent System Operator Corp.*, 106 FERC ¶ 61,099 (2004). In addition to clarifying issues relating to certain preliminary rerun issues, that order also granted the ISO's request to defer a compliance filing due to the "delayed completion of the preparatory re-runs." *Id.* at ¶ 20. FERC required the ISO to begin filing monthly status reports of the preparatory re-runs. As especially relevant here, FERC further required the ISO to report "on a monthly basis the dates that it expects to complete both the preparatory re-runs and settlements and billing process for calculating refunds." *Id.* at 21.

Given that the preparatory reruns must be completed to provide a baseline for the refund reruns, it is now apparent that the refund reruns will not be completed by March

2004, as originally contemplated by FERC. Even when completed, however, this does not end the process, since the PX, in turn, uses the ISO's rerun data to undertake its own reruns, which are expected to take an additional one or two months. Furthermore, each rerun may give rise to additional disputes by market participants that would trigger dispute resolution procedures under the ISO and/or the PX tariffs. Any such disputes could further delay having final rerun numbers.

Once the final reruns are completed and compliance filings are made by the ISO and the PX with FERC, a comment period will be available, after which FERC would rule on the compliance filings. Interested parties may (and are likely to) seek rehearing of FERC's ruling. This process is anticipated to take several additional months.

Based on the foregoing, FERC is not expected to make determinations regarding the amounts owed to and owing by relevant parties, resulting in ascertainment of the Allowed amounts of ISO, PX and Generator Claims, until the latter part of 2004 at the earliest, and quite possibly not until 2005. Since most, if not virtually all of the issues which might otherwise be the subject of PG&E's objections to these Claims are likely to be resolved through FERC's ruling in the FERC Refund Proceedings, PG&E submits that it is appropriate to extend the time for objecting to the ISO, PX and Generator Claims listed on Exhibit 1 attached hereto until such Claims become Allowed pursuant to the Plan (*i.e.*, on the date designated by FERC when payments are to be made on account of ISO, PX and Generator Claims pursuant to an unstayed order in the FERC Refund Proceedings, or if no date is designated in such order, 45 days after the issuance of such order, provided such order has not been stayed).

## **2. The Scheduling Coordinator Services Tariff Proceeding**

Several creditors have filed claims related to the Scheduling Coordinator Services ("SCS") Tariff proceeding pending before FERC (collectively, the "SCS Related Claims"), as listed on Exhibit 2 attached hereto. PG&E commenced the SCS Tariff proceeding at FERC in November 1999 (FERC Docket No. ER00-565-000, et al.). Under the SCS Tariff, PG&E proposes to pass-through certain charges that PG&E receives from the ISO. PG&E

1 incurs these charges in its role as a scheduling coordinator pursuant to the provisions of the  
 2 FERC-approved ISO Tariff. In January 2000, FERC accepted PG&E's filing, but held  
 3 hearings in abeyance pending the outcome of a related proceeding. *Pacific Gas and Electric*  
 4 *Co.*, 90 FERC ¶ 61,010 (2000). FERC reactivated this proceeding in May 2003. *Pacific*  
 5 *Gas and Electric Co.*, 103 FERC ¶ 61,180 (2003). Since that time, the SCS Tariff  
 6 proceeding has been bifurcated by the Presiding Administrative Law Judge. Phase 1 of the  
 7 proceeding addresses liability issues and Phase 2 addresses cost allocation issues. A two-  
 8 week hearing on Phase 1 was conducted between January 6 and 15, 2004. The parties are  
 9 currently briefing various issues raised during that hearing and an Initial Decision is  
 10 expected to be issued by April 19, 2004. Phase 2 is scheduled to commence in April 2004  
 11 and hearings are expected to begin in December 2004 and will likely last three to four  
 12 weeks. An Initial Decision in Phase 2 is not expected to be issued until Spring 2005, and a  
 13 FERC order in this proceeding will likely not be issued before late 2005 or early 2006.

14 Since most of the issues which might otherwise be the subject of PG&E's  
 15 objections to the SCS Related Claims are likely to be resolved through FERC's ruling in the  
 16 SCS Tariff proceeding, PG&E submits that it is appropriate to extend the time for objecting  
 17 to such Claims (listed on Exhibit 2 attached hereto) until 45 days after FERC's issuance of  
 18 an order in that proceeding, provided such order has not been stayed. (Such extension is  
 19 analogous to the treatment for ISO, PX and Generator Claims discussed above.)

### 20 **3. The California-Oregon Transmission Project Proceeding**

21 PG&E has been involved in an ongoing dispute with the ISO as to whether the  
 22 ISO may properly charge PG&E for certain ISO-incurred costs associated with transmission  
 23 schedules that flow over the California-Oregon Transmission Project ("COTP"). Under the  
 24 ISO Tariff, the ISO only has FERC approval to charge for schedules that flow over  
 25 transmission facilities that are under the ISO's operational control. The COTP is *not* under  
 26 ISO operational control and never has been. PG&E paid approximately \$14 million in  
 27 COTP-related ISO charges before realizing that the ISO was surreptitiously charging PG&E  
 28 for such amounts. Once PG&E discovered that the ISO was including these charges,

1 inappropriately, in invoices to PG&E, PG&E disputed them and initiated arbitration under  
 2 the ISO Tariff's alternative dispute resolution ("ADR") provisions. PG&E prevailed in that  
 3 arbitration, obtaining an arbitration award that directed the ISO to return the amounts  
 4 inappropriately collected from PG&E. Pursuant to the ADR provisions under the ISO  
 5 Tariff, the ISO "appealed" the arbitration award to FERC, seeking to reverse the decision as  
 6 to the \$14 million already paid by PG&E, *and* asserting that PG&E owes an additional \$36  
 7 million of COTP-related charges. That appeal has been fully briefed and is currently  
 8 pending at FERC. It is not known when FERC might issue its decision in this proceeding.  
 9 The ISO has filed a claim against PG&E relating to the additional COTP-related amounts  
 10 that it alleges are owed to it by PG&E (the "ISO COTP Claim").

11 Since most, if not virtually all of the issues which might otherwise be the subject  
 12 of PG&E's objections to the ISO COTP Claim are likely to be resolved through FERC's  
 13 ruling in the COTP proceeding, PG&E submits that it is appropriate to extend the time for  
 14 objecting to such Claim (listed on Exhibit 2 attached hereto) until 45 days after FERC's  
 15 issuance of an order in that proceeding, provided such order has not been stayed. (Such  
 16 extension is analogous to the treatment for ISO, PX and Generator Claims discussed above.)

#### 17 **4. The PX Chargeback Proceeding**

18 As discussed in PG&E's Omnibus Objection To PX Charge-Back Claims filed  
 19 herein on January 28, 2003 (Docket No. 11912), on April 6, 2001, FERC issued an order  
 20 rescinding certain "PX chargebacks" imposed by the PX on its market participants, finding  
 21 that the PX chargeback methodology led to unjust and unreasonable results. Certain  
 22 requests for rehearing of that order were filed, which are still pending. In subsequent orders,  
 23 FERC has denied requests by certain market participants to obtain the return of chargeback  
 24 amounts, stating that certain issues are still pending on rehearing, and that nothing should be  
 25 done until FERC issues further orders, as other proceedings may impact the appropriate  
 26 resolution.

27 Pursuant to this Court's April 28, 2003 Order Overruling Debtor's Omnibus  
 28 Objection To PX Charge-Back Claims Without Prejudice (Docket No. 12647), this Court



1 overruled, without prejudice, PG&E's omnibus objection to claims based on PX  
 2 chargebacks (collectively, the "PX Chargeback Claims"), essentially finding that such  
 3 objection was premature because the subject claims could be impacted by FERC's ruling in  
 4 the above-discussed proceedings. Although FERC has not indicated when it expects to issue  
 5 a ruling with respect to the issues pending on rehearing, PG&E expects that such ruling will  
 6 be issued by FERC as part of the resolution of the FERC Refund Proceedings.

7 Accordingly, PG&E submits that it is appropriate to extend the time for objecting  
 8 to PX Chargeback Claims listed on Exhibit 4 attached hereto until 45 days after FERC's  
 9 issuance of an order regarding the issues pending on rehearing in the PX chargeback  
 10 proceeding, provided such order has not been stayed. (Such extension is analogous to the  
 11 treatment for ISO, PX and Generator Claims discussed above.)

#### 12 **C. Claims Affected By Resolution Of The FERC Refund Proceedings.**

13 The Debtor requests that the requested extension of the time to object to ISO, PX  
 14 and Generator Claims also apply to certain Claims which are expected to be affected by the  
 15 resolution of the FERC Refund Proceedings (collectively, the "FERC Refund Proceeding  
 16 Related Claims"). These include various Claims whose amount is necessarily based on the  
 17 appropriate "Market Mitigated Clearing Prices" ("MMCP") which are the subject of the  
 18 FERC Refunds Proceedings, as described below.

##### 19 **1. RMR Claims**

20 Several claims have been filed against PG&E based on amounts allegedly due  
 21 under the claimants' respective Reliability Must Run ("RMR") Agreements (collectively, the  
 22 "RMR Claims"). Generally speaking, RMR Agreements provide that, when called upon by  
 23 the ISO, the RMR owner will make energy available in order to maintain acceptable voltage  
 24 and line loads in the transmission grid. Pursuant to the RMR Agreements and applicable  
 25 ISO Tariffs, RMR owners bill the ISO for their RMR services; the ISO reviews such bills  
 26 and if it accepts them, invoices the transmission-owning utility (here, PG&E) by posting the  
 27 invoices on the secure ISO website.

28 The market reruns that the ISO is required to undertake in connection with the  
 MOTION FOR EXTENSION OF TIME TO OBJECT TO CERTAIN PROOFS OF CLAIM AND RELATED RELIEF



1 FERC Refund Proceedings (as discussed in Section II.B.1. above) will affect the  
 2 "Scheduling Coordinator Credits" ("SC Credits") on the RMR owners' respective invoices,  
 3 thereby necessarily impacting the amount of the RMR Claims. In particular, the RMR  
 4 Agreements provide that either "[a]ny amounts received by or due to Owner's Scheduling  
 5 Coordinator for Billable MWh and Ancillary Services Delivered in Nonmarket Transactions  
 6 shall be subtracted from the amount otherwise due under each RMR invoice" (*id.* § 9.1(e)),  
 7 or "[a]ll amounts received by or due to Owner's Scheduling Coordinator in connection with  
 8 Market Transactions and Nonmarket Transactions during the Billing Month ('Scheduling  
 9 Coordinator Revenues') shall be subtracted from the amount otherwise due under each RMR  
 10 Invoice" (*id.* § 9.1(f)).<sup>12</sup>

11 Thus, the amounts due to the Owner's Scheduling Coordinator are based on the  
 12 applicable MMCP for electricity and ancillary services. Pursuant to FERC's March 26  
 13 Order discussed in Section II.B.1. above, the ISO's market reruns in connection with the  
 14 FERC Refund Proceedings are expected to result in changes to the applicable MMCP,  
 15 thereby changing the amount of the SC Credits on the RMR Owners' invoices, and,  
 16 consequently, the amount owed with respect to the RMR Claims.

17 Accordingly, PG&E submits that it is appropriate to extend the time for objecting  
 18 to the RMR Claims listed on Exhibit 2 attached hereto consistent with the requested  
 19 extension of time to object to ISO, PX and Generator Claims (*i.e.*, on the date designated by  
 20 FERC when payments are to be made on account of ISO, PX and Generator Claims pursuant  
 21 to an unstayed order in the FERC Refund Proceedings, or if no date is designated in such  
 22 order, 45 days after the issuance of such order, provided such order has not been stayed).

## 23 **2. Claims For Imbalance Energy And Emergency Services**

24 Various claims have been filed against PG&E for "Imbalance Energy," "Energy  
 25 Sales to PG&E," "Emergency Services" and similar amounts (collectively "Imbalance  
 26

27 <sup>12</sup> Section 9.1(e) applies if the Unit operates under "Condition 1," while Section 9.1(f)  
 28 applies if the Unit operates under "Condition 2" pursuant to the RMR Agreement.

1 Energy Claims”) (as listed on Exhibit 2 attached hereto). Imbalance Energy refers to energy  
 2 sold to PG&E by power sellers, which PG&E in turn sold into the ISO's imbalance energy  
 3 market following the collapse of the PX and the markets it operated in mid-January 2001.  
 4 The Imbalance Energy Claims are based on energy prices that FERC has determined were  
 5 not just and reasonable in connection with the FERC Refund Proceedings, and has ruled that  
 6 the appropriate MMCP should be applied to such Imbalance Energy sales. Specifically, in  
 7 item 5.O. (included in the “Proposed Finding Summarily Adopted”) of its March 26 Order,  
 8 FERC stated:

9 “The CAISO should mitigate capacity charges for ancillary services or  
 10 other non-energy charges by applying the MMCP to sales of  
 11 imbalance energy and ancillary service sales and their attendant charge  
 12 types.”

12 Pursuant to FERC’s March 26 Order, the ISO’s market reruns in connection with  
 13 the FERC Refund Proceedings are expected to result in changes to the applicable MMCP,  
 14 thereby changing the amount owed with respect to the Imbalance Energy Claims.  
 15 Accordingly, PG&E submits that it is appropriate to extend the time for objecting to the  
 16 Imbalance Energy Claims listed on Exhibit 2 attached hereto consistent with the requested  
 17 extension of time to object to ISO, PX and Generator Claims (*i.e.*, on the date designated by  
 18 FERC when payments are to be made on account of ISO, PX and Generator Claims pursuant  
 19 to an unstayed order in the FERC Refund Proceedings, or if no date is designated in such  
 20 order, 45 days after the issuance of such order, provided such order has not been stayed).

### 21 **3. QF Claims**

22 Certain “qualifying facilities” (“QFs”) have filed claims against PG&E (listed on  
 23 Exhibit 2 attached hereto) including amounts owed under their respective Power Purchase  
 24 Agreements (“PPAs”) which are calculated based on the “PX day-ahead hourly zonal market  
 25 clearing price” for a certain period of time (the “QF Claims Based On PX Pricing”).

26 Pursuant to FERC’s March 26 Order, the ISO and PX market reruns in  
 27 connection with the FERC Refund Proceedings are expected to result in changes to the  
 28 applicable MMCP, thereby changing the amount owed with respect to the QF Claims Based

1 On PX Pricing. Specifically, under PG&E's PPA with Midway-Sunset Cogeneration  
 2 Company ("Midway"), PG&E was obligated to pay Midway under standard Short Run  
 3 Avoided Cost ("SRAC") pricing provisions. During the period covered by this Claim,  
 4 Midway bid its output directly into the PX and received payment for its output from the PX  
 5 at the PX day-ahead zonal market clearing price. To the extent that Midway's revenues  
 6 from the PX were less than the SRAC amount, PG&E was obligated to make up the  
 7 difference between the PX and SRAC amounts. To the extent that the PX amount exceeded  
 8 the SRAC amount, Midway was obligated to pay this excess to PG&E. Midway's Claim  
 9 reflects only the SRAC amount for January 2001 since the PX has not yet paid out any  
 10 amounts for January 2001. The precise PX price for this period is uncertain and will not be  
 11 finally determined until the FERC Refund Proceedings are resolved.

12 Georgia-Pacific Corporation ("Georgia Pacific") is a "Switcher QF." Pursuant to  
 13 California Public Utilities Commission ("CPUC") Decision No. 99-11-025, issued on  
 14 November 4, 1999, the CPUC approved a PX-based SRAC energy price to be paid to those  
 15 QFs that voluntarily elected to receive that price pursuant to California Public Utilities Code  
 16 Section 390. That decision authorized QFs, upon appropriate notice to the affected utility, to  
 17 begin receiving the PX's day-ahead hourly zonal market clearing price, subject to later true-  
 18 up to ensure that "[p]ayment using the interim adopted day-ahead zonal market-clearing  
 19 price [] not under-compensate nor over-compensate the QFs, compared to the payments we  
 20 may ultimately adopt in the more comprehensive § 390 proceeding." For deliveries from  
 21 Switcher QFs, including Georgia Pacific, from January 1, 2001 through January 18, 2001,  
 22 PG&E capped energy payments at the FERC-mandated \$150/MWh level. Georgia Pacific's  
 23 Claim includes \$300,031.31 in sums stemming from the difference between payments made  
 24 to it at the \$150 per MW soft cap, and payments under the January 2001 posted day-ahead  
 25 zonal market clearing prices. However, until the FERC Refund Proceedings are resolved,  
 26 the proper day-ahead zonal market clearing prices remain undetermined.

27 Thus, the Allowed Amount of the QF Claims Based On PX Pricing cannot be  
 28 determined until resolution of the FERC Refund Proceedings. Accordingly, PG&E submits

MOTION FOR EXTENSION OF TIME TO OBJECT TO CERTAIN PROOFS OF CLAIM AND RELATED RELIEF

1 that it is appropriate to deem such Claims as Disputed Claims for a period that is consistent  
 2 with the extension of time to object to ISO, PX and Generator Claims (*i.e.*, on the date  
 3 designated by FERC when payments are to be made on account of ISO, PX and Generator  
 4 Claims pursuant to an unstayed order in the FERC Refund Proceedings, or if no date is  
 5 designated in such order, 45 days after the issuance of such order, provided such order has  
 6 not been stayed).

7  
 8 **D. Extension Applicable To Other Portions Of Claims With ISO, PX And  
 Generator Claims Component**

9 The Debtor further requests that the extension of time to object to Claims  
 10 containing ISO, PX and Generator Claims apply to all components of such Claims, including  
 11 those which are not directly affected by the resolution of the FERC Refund Proceedings  
 12 (collectively, the "Other Component Claims"). Absent such relief, the Debtor may be forced  
 13 to prematurely file objections to and litigate the Other Component Claims, which generally  
 14 constitute a relatively minor portion of the applicable Claim, and could potentially be part of  
 15 a global resolution of such Claim upon determination of the Allowed amount of the ISO, PX  
 16 and Generator Claims portion following resolution of the FERC Refund Proceedings.

17 The Debtor submits that granting such relief will avoid piecemeal and potentially  
 18 needless litigation, which is in the best interests of all concerned parties, as well as the  
 19 Court.

20  
 21 **E. Extension Of The Time To Object To Claims Subject To Pending Objections  
 And Other Disputed Claims**

22 The Debtor has filed objections to hundreds of Claims in this case, many of  
 23 which remain pending. The Debtor also intends to file objections to numerous other claims  
 24 prior to the Effective Date, many of which are not expected to be resolved by the Effective  
 25 Date. Pursuant to this Court's Order (1) Authorizing Debtor To File Certain Preliminary  
 26 Omnibus Objections To Claims Without Prejudice To Right To File Subsequent Objections  
 27 Thereto And (2) Waiving Compliance With Federal Rules Of Civil Procedure 26(a) And (f)  
 28 In Certain Claims Objection Proceedings," entered herein on January 8, 2002 (Docket No.

MOTION FOR EXTENSION OF TIME TO OBJECT TO CERTAIN PROOFS OF CLAIM AND RELATED RELIEF

1 4114), to the extent that a claim is not fully resolved through the determination of the  
 2 Debtor's "omnibus" objection, the Debtor may file additional objections to such claim on  
 3 any grounds not included in the omnibus objection. In addition, based on, *inter alia*,  
 4 stipulations entered into with various creditors and certain Orders issued by this Court, there  
 5 are currently a number of Disputed Claims which are not expected to become Allowed by  
 6 the Effective Date, and which may be subject to additional objections.

7 Accordingly, the Debtor seeks an extension of the time for it to object to claims  
 8 which are subject to pending objections or otherwise constitute Disputed Claims as of the  
 9 Effective Date, until 30 days after the objections to such Claims are finally resolved or such  
 10 Claims no longer constitute Disputed Claims. The Debtor submits that this will conserve  
 11 estate resources by preventing the Debtor from being forced to make potentially unnecessary  
 12 objections which might otherwise be required if such objections or disputes were not  
 13 resolved prior to the Effective Date, which is the current deadline for objecting to Claims.

14 **F. The Claims Subject To The Requested Extensions Should Be Deemed**  
 15 **Disputed Claims Until The Applicable Objection Deadline Elapses**

16 In order to effectuate the relief requested herein, the Debtor further requests that  
 17 all of the Claims that are subject to the extensions sought herein be deemed Disputed Claims  
 18 under the Plan until expiration of the period for objecting to such Claims.<sup>13</sup> Absent such  
 19 relief, such Claims could become "Allowed" and accordingly entitled to payment under the  
 20 Plan, notwithstanding the Debtor's right to file objections to such Claims. In such event, the  
 21 Debtor would be placed in the difficult position of potentially having to recover payments  
 22 made to a creditor to the extent a subsequent objection is sustained.

23 The Debtor submits that, in view of the provisions for the accrual of interest on  
 24 Disputed Claims until such Claims are paid, the relevant claimants will not be prejudiced by  
 25 this additional relief.

26 <sup>13</sup> The Debtor notes that if the requested extension is granted, such treatment will be  
 27 consistent with the treatment already provided under the Plan with respect to certain such  
 28 Claims, including the ISO, PX and Generator Claims. That is, the deadline for objecting to  
 such Claims would be the date that such Claims become Allowed pursuant to the Plan.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

### III.

### CONCLUSION

For all of the foregoing reasons, PG&E respectfully requests that the Court make and enter its Order as follows:

1. Granting the Motion.

2. Extending the time for PG&E to object to the ISO, PX and Generator Claims listed on Exhibit 1 attached hereto until such Claims become Allowed pursuant to the Plan (*i.e.*, on the date designated by FERC when payments are to be made on account of ISO, PX and Generator Claims pursuant to an unstayed order in the FERC Refund Proceedings, or if no date is designated in such order, 45 days after the issuance of such order, provided such order has not been stayed).

3. Extending the time for PG&E to object to the RMR Claims and the Imbalance Energy Claims listed on Exhibit 2 attached hereto until the date designated by FERC when payments are to be made on account of ISO, PX and Generator Claims pursuant to an unstayed order in the FERC Refund Proceedings, or if no date is designated in such order, 45 days after the issuance of such order, provided such order has not been stayed.

4. Extending the time for PG&E to object to the Other Component Claims listed on Exhibit 3 attached hereto until the date designated by FERC when payments are to be made on account of ISO, PX and Generator Claims pursuant to an unstayed order in the FERC Refund Proceedings, or if no date is designated in such order, 45 days after the issuance of such order, provided such order has not been stayed.

5. Extending the time for PG&E to object to the SCS Related Claims listed on Exhibit 2 attached hereto until 45 days after FERC's issuance of an order in the SC Tariff proceeding, provided such order has not been stayed.

6. Extending the time for PG&E to object to the ISO COTP Claim (listed on Exhibit 2 attached hereto) until 45 days after FERC's issuance of an order in the COTP proceeding, provided such order has not been stayed.

7. Extending the time for PG&E to object to the PX Chargeback Claims listed



1 on Exhibit 4 attached hereto until 45 days after FERC's issuance of an order regarding the  
2 issues pending on rehearing in the PX chargeback proceeding, provided such order has not  
3 been stayed.

4 8. Extending the time for PG&E to object to claims which are subject to  
5 pending objections or otherwise constitute Disputed Claims as of the Effective Date, until 30  
6 days after the objections to such Claims are finally resolved or such Claims are no longer  
7 Disputed.

8 9. Providing that QF Claims Based On PX Pricing listed on Exhibit 2 attached  
9 hereto shall constitute Disputed Claims until the date designated by FERC when payments  
10 are to be made on account of ISO, PX and Generator Claims pursuant to an unstayed order  
11 in the FERC Refund Proceedings, or if no date is designated in such order, 45 days after the  
12 issuance of such order, provided such order has not been stayed.

13 10. Providing that the foregoing extensions may be further extended by the  
14 Court based upon a subsequent motion filed on or before the applicable deadline.

15 11. Providing that all of the Claims that are subject to the foregoing extensions  
16 shall be deemed Disputed Claims under the Plan until expiration of the applicable period for  
17 objecting to such Claims.

18 12. Granting such other and further relief as may be just and appropriate.

19 DATED: February 6, 2004

20 Respectfully,

21 HOWARD, RICE, NEMEROVSKI, CANADY,  
22 FALK & RABKIN  
23 A Professional Corporation

24 By: Gary M. Kaplan  
25 GARY M. KAPLAN

26 Attorneys for Debtor and Debtor in Possession  
27 PACIFIC GAS AND ELECTRIC COMPANY

28 WD 020604/1-1419913/120/1126820/v3